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8 Transfer of Funds by Local Governments

Official Title and Summary Prepared by the Attorney General

TRANSFER OF FUNDS BY LOCAL GOVERNMENTS. LEGISLATIVE CONSTITUTIONAL AMENDMENT. The Constitution provides exceptions from the lending of credit and gift restrictions for the making of specified temporary transfers of funds to counties, cities, districts, and other political subdivisions to meet their obligations incurred for maintenance purposes. Presently funds so transferred may not exceed 85 percent of "taxes" accruing to the political subdivision and must be replaced from "taxes" accruing before any other obligations are met from "taxes." This amendment modifies the limitation to 85 percent of "anticipated revenues" and requires repayment from "revenues" accruing before any other obligations are met from "revenues." Summary of Legislative Analyst's estimate of net state and local government fiscal impact: No direct state or local fiscal impact. As described in Analyst's estimate, when larger amounts of money are loaned it could reduce the interest costs of the borrowing local agency and, conversely, reduce the interest that would normally otherwise be earned by the nonborrowing local agencies.

FINAL VOTE CAST BY THE LEGISLATURE ON ACA 56 (PROPOSITION 8)

Assembly—Ayes, 63	Senate—Ayes, 37
Noes, 0	Noes, 0

Analysis by the Legislative Analyst

Background:

The State Constitution permits the treasurer of any city, county, or city and county to make temporary interest-free transfers of funds to prescribed local agencies within the city or county. These transfers provide a means by which local agencies can secure the funds they need to meet their financial obligations prior to receiving their annual revenues from tax collections. The transfers are made at the discretion of the city or county, and may not exceed 85 percent of the *tax* revenues which the borrowing local agency is expected to receive during the course of the fiscal year. No funds may be transferred between the last Monday in April and July 1 (the start of a new fiscal year). Any transfers made must be repaid by the treasurer of the city or county out of the tax revenues deposited to the credit of the borrowing agency, prior to the payment of any other obligation of the borrowing agency.

In addition, various provisions of current law authorize a city or county to loan any of its available funds to specified local agencies, under specified conditions. These loans are financed from moneys available to the city or county treasurer and do not involve private-sector lending institutions.

Local agencies are also authorized by statute to borrow funds from private sources, through the issuance of interest-bearing notes. The purpose of these borrowings is to provide cash needed to meet financial obligations over short periods of time, pending receipt of anticipated taxes or other revenues. These notes, commonly known as "tax anticipation," "revenue anticipation," or "grant anticipation" notes, bear interest at rates not to exceed 12 percent per year. The issuance of these types of notes is the predominant method used by local agencies to meet their cash flow needs.

Proposal:

This constitutional amendment would permit the treasurer of any city, county, or city and county to transfer to certain local agencies an amount equal to 85 percent of the agency's anticipated *revenues* during that fiscal year. Thus, this amendment would change the Constitution by allowing transfers to be made in amounts of up to 85 percent of anticipated *total revenues,* as opposed to 85 percent of anticipated *tax revenues.* As many local agencies receive significant portions of their total revenues from nontax sources, this amendment would provide constitutional authorization for cities, counties, and cities and counties to make larger temporary transfers of funds to local agencies within their jurisdiction.

Fiscal Effect:

This measure has no direct state or local fiscal impact. It could, however, affect the interest earnings which local agencies derive from temporarily idle funds. Typically, the treasurer of a city or county is responsible for the management and investment of funds belonging to the city or county and other local agencies as well. The portion of these funds which is not needed for immediate payment of obligations normally is invested at market rates, producing investment income that is shared among those agencies whose funds are invested. This investment pool is also the source of funds for the temporary interest-free transfers of moneys to local agencies authorized by the Constitution. As a consequence, the amount of funds available for investment, and therefore the investment earnings generated, is reduced to the extent that these transfers are made. The borrowing agency is charged no interest on temporary transfers made pursuant to the constitutional authorization.

Therefore, to the extent that this amendment results in larger amounts of money being made available as loans from the investment pool to local agencies, it would reduce the level of interest earnings realized by nonborrowing local agencies participating in the investment pool. Conversely, this amendment would reduce interest costs for the borrowing local agencies to the extent that they would otherwise have to meet their cash flow requirements by issuing revenue anticipation notes.

Text of Proposed Law

This amendment proposed by Assembly Constitutional Amendment 56 (Statutes of 1982, Resolution Chapter 60) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE XVI, SECTION 6

~~SEC.~~ *SEC.* 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

Provided, further, that nothing contained in this Constitution shall prohibit the use of State money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation; and

Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the ~~taxes~~ *anticipated revenues* accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the ~~taxes~~ *revenues* accruing to such political subdivision before any other obligation of such political subdivision is met from such ~~taxes~~ *revenue*.

8 Transfer of Funds by Local Governments

Argument in Favor of Proposition 8

Proposition 8 is designed to allow local governments to manage their money more efficiently. The Constitution now allows these agencies to borrow from the county treasury against taxes they expect to receive. This money is repaid in December and April when taxes are collected.

Proposition 8 would permit local agencies to borrow against taxes *and* other revenues, such as fees, to meet day-to-day expenses during the summer and fall months before taxes are collected. Without this measure local agencies will find it increasingly difficult to maintain services throughout the year.

Proposition 8 is endorsed by the County Supervisors Association of California.

Proposition 8 *will not result in a tax increase.* Proposition 8 *does not add new taxes.*

LAWRENCE KAPILOFF
Member of the Assembly, 78th District

Rebuttal to Argument in Favor of Proposition 8

Proposition 8 is designed to allow local governments to manage their money *less* efficiently. In addition to allowing local governments to borrow against taxes that have accrued, Proposition 8 would allow the spending of up to 85 percent of anticipated revenues before they are received. Government entities should not be given any further latitude to spend revenues they do not have, but only anticipate.

Proposition 8 would allow overspending in June and only require an entity to say, "We'll make it up in December." The argument in favor does not explain what will then happen in December when revenues received will have to be used to pay off the money borrowed in June. The only answer will be to again borrow against the future, creating a vicious cycle whereby government entities will always be living beyond their means with the hope of making it up in the future.

Government mismanagement is already bad enough and has already caused too many problems for which the taxpayers ultimately suffer, both in increased taxes and in failure to receive adequate services. The last thing we need is a constitutional amendment such as Proposition 8 which encourages further mismanagement. VOTE NO!

TIMOTHY D. WEINLAND
Attorney at Law

Argument Against Proposition 8

Proposition 8 must be defeated. It gives local governments even more opportunity to mismanage funds and spend revenues before they have been received. Government mismanagement and deficit spending have already fueled inflation too much and created too many emergencies where there are insufficient funds to provide needed services. Proposition 8 would expand local government's ability to transfer funds to political subdivisions under circumstances that would otherwise be considered an unconstitutional gift of public funds.

Under current provisions of the California Constitution, gifts of public funds are prohibited, with certain exceptions. One exception allows the treasurer of a city or county, upon a resolution adopted by its governing body, to transfer funds that are deemed necessary for maintenance purposes by the city, county, or other political subdivision. Currently, these transfers of funds are temporary and are limited to 85 percent of the taxes accruing to the political subdivision receiving the funds.

Proposition 8 instead allows transfers of funds of 85 percent of the "anticipated revenues," allowing an advance of funds that have not even accrued, but are only anticipated! This is a clear attempt to allow local governmental entities to live beyond their means and spend money out of city and county treasuries designated for other purposes based on the intention of reimbursing the treasuries with revenues that are anticipated sometime in the future. These advances would be repaid without interest, forcing the taxpayers to finance free loans to local governments that mismanage their funds and then want to spend tomorrow's revenues today.

Proposition 8 creates further exceptions to the constitutional prohibition against gifts of public funds. Proposition 8 encourages waste of the taxpayers' money and rewards government mismanagement. Proposition 8 must be defeated! VOTE NO!

TIMOTHY D. WEINLAND
Attorney at Law

Rebuttal to Argument Against Proposition 8

Borrowing by local government against anticipated revenues is not "deficit spending." "Deficit spending" is unconstitutional in California. Proposition 8 will not change that.

Existing provisions of the Constitution authorizing borrowing against anticipated taxes were established when property taxes were the principal means of financing local government. Today many local government services are financed by user fees and benefit charges. Proposition 8 will not promote an "unconstitutional gift of public funds." Proposition 8 is an effort to amend the Constitution to reflect the current realities of local government financing.

Borrowing in anticipation of revenues will not create local government funding emergencies. In fact, such borrowing is necessary to avoid funding emergencies. Government services must be provided 7 days a week, 24 hours a day. Police protection, fire protection, sewage management—all cost money. Government must pay its bills on time. Currently, revenues are often received after expenses are incurred. Such funding gaps can and do create emergencies.

The authority to borrow against anticipated revenues is *the* way to *avoid* funding emergencies. Moreover, authority to borrow against anticipated revenues will enable local government agencies to better schedule their work.

Lastly, borrowing from the county treasury in anticipation of revenues does not fuel inflation. Inflation is fueled by large-scale, long-term borrowing to finance a deficit. Local agency borrowing is small scale, short term and does not finance a deficit. If local agencies cannot so borrow, they must borrow in the open market. Taxpayers must pay interest on such outside borrowing.

LAWRENCE KAPILOFF
Member of the Assembly, 78th District